

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSE A. GOMEZ, on behalf of)
themselves and all other similarly)
situated individuals, JULIANA REYES,)
on behalf of themselves and all other)
similarly situated individuals, JUAN M.)
CRUZ, on behalf of themselves and all)
other similarly situated individuals, TED)
MCDONALD, on behalf of themselves)
and all other similarly situated)
individuals, CECILIA ORTIZ, on behalf)
of themselves and all other similarly)
situated individuals, and MARIO CRUZ,)
on behalf of themselves and all other)
similarly situated individuals,)

Plaintiffs,)

v.)

TYSON FOODS, INC.,)

Defendant.)
_____)

8:08CV21

MEMORANDUM AND ORDER

This matter is before the court on the objections, Filing No. [75](#), to the findings and recommendation of the magistrate judge, Filing No. [74](#), granting the motion to certify the class, Filing No. [62](#). Plaintiffs, current and former employees of the defendant, filed this case pursuant to the Fair Labor Standards Act of 1938 ("FLSA"), [29 U.S.C. § 201](#), as well as federal and state wage and hour laws. Plaintiffs allege violations of FLSA for pre- and post-production activities which include donning, doffing, and other job related activities.

Plaintiffs filed this case requesting class certification for all those similarly situated. Defendant objects. Defendant contends that the magistrate judge failed to conduct a

rigorous analysis to determine if the requirements of Fed. R. Civ. P. 23 are satisfied.¹ The court has carefully reviewed the objections and finds they are without merit. The magistrate judge wrote a thorough order analyzing the request for class certification and determined that such request should be granted. Filing No. [74](#). The court has carefully reviewed the objections, the findings and recommendation, the law, and the entire record and finds the decision of the magistrate judge should be adopted in its entirety.

THEREFORE, IT IS ORDERED:

1. Plaintiffs' motion to certify the class, Filing No. [62](#), is granted;
2. Defendant's objections, Filing No. [75](#), are overruled; and
3. The findings and recommendation of the magistrate judge, Filing No. [74](#), is adopted in its entirety.

DATED this 30th day of March, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge

¹Defendant argues that currently before the United States Supreme Court is a case entitled *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 594 (9th Cir.), cert granted, in part, 2010 U.S. Lexis 9588 (U.S. Dec. 6, 2010) that could change how the court analyzes the facts in a class certification decision. If, when the Supreme Court files its decision in this case, the defendant believes it changes the outcome of this ruling, defendant is free to file a motion and mini-brief with the court.

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.